

the state of Kansas for injunction or other process against any person or agency to restrain or prevent the operation of an adult care home without a license under this act.

History: L. 1961, ch. 231, § 22; L. 1972, ch. 171, § 19; L. 1975, ch. 462, § 47; L. 1982, ch. 189, § 5; L. 1984, ch. 313, § 66; July 1, 1985.

**39-945.** Correction orders; issuance; contents. A correction order may be issued by the secretary of health and environment or the secretary's designee to a person licensed to operate an adult care home whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of health and environment inspects or investigates an adult care home and determines that the adult care home is not in compliance with the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules and regulations promulgated thereunder which individually or jointly affects significantly and adversely the health, safety, nutrition or sanitation of the adult care home residents. The correction order shall be served upon the licensee either personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated and shall specify the time allowed for correction.

History: L. 1978, ch. 161, § 1; L. 1980, ch. 127, § 1; L. 1988, ch. 146, § 1; July 1.

**39-946.** Civil penalty; issuance; notice of assessment; factors in determining amount of civil penalty; enforcement. (a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of health and environment, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of health and environment may assess a civil penalty in an amount not to exceed \$500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order if the adult care home has not corrected the deficiency or deficiencies listed in the correc-

tion order, but the maximum assessment shall not exceed \$2,500. Prior to the assessment of a civil penalty, the case shall be reviewed by a person licensed to practice medicine and surgery. A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) Before the assessment of a civil penalty, the secretary shall consider the following factors in determining the amount of the civil penalty to be assessed: (1) The severity of the violation; (2) the good faith effort exercised by the adult care home to correct the violation; and (3) the history of compliance of the ownership of the adult care home with the rules and regulations. If the secretary of health and environment finds that some or all deficiencies cited in the correction order have also been cited against the adult care home as a result of any inspection or investigation which occurred within 18 months prior to the inspection or investigation which resulted in such correction order, the secretary of health and environment may double the civil penalty assessed against the licensee of the adult care home, the maximum not to exceed \$5,000.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary of health and environment may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

History: L. 1978, ch. 161, § 2; L. 1980, ch. 127, § 2; L. 1988, ch. 146, § 2; July 1.

**39-947.** Appeals to secretary; hearing; disposition of civil penalties. Any licensee against whom a civil penalty has been assessed under K.S.A. 39-946, and amendments thereto, may appeal such assessment within 10 days after receiving a written notice of assessment by filing with the secretary of health and environment written notice of appeal specifying why such civil penalty should not be assessed. Such appeal shall not operate to stay the payment of the civil penalty. Upon receipt of the notice of appeal, the secretary of health and environment shall conduct a hearing in accordance with

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with the provisions of the Kansas administrative procedure act. If the secretary sustains the appeal, any civil penalties collected shall be refunded forthwith to the appellant licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the secretary denies the appeal and no appeal from the secretary is taken to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions, the secretary shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

History: L. 1978, ch. 161, § 3; L. 1980, ch. 127, § 3; L. 1984, ch. 313, § 67; July 1, 1985.

**39-948.** Appeals to district court; disposition of civil penalties. (a) A licensee may appeal to the district court from a decision of the secretary under K.S.A. 39-947, and amendments thereto. The appeal shall be tried in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

(b) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary of health and environment shall refund forthwith the payment of any civil penalties to the licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the court denies the appeal, the secretary of health and environment shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

History: L. 1978, ch. 161, § 4; L. 1980, ch. 127, § 4; L. 1984, ch. 313, § 68; July 1, 1985.

**39-949.** Disposition of moneys. All civil penalties collected pursuant to the provisions of this act shall be deposited in the state general fund.

History: L. 1978, ch. 161, § 5; July 1.

**39-950.** Rules and regulations. The secretary of health and environment may adopt rules and regulations necessary to carry out the provisions of this act.

History: L. 1978, ch. 161, § 6; July 1.

**39-951.** Authority granted under act additional and not limiting. The authority granted to the secretary of health and environment under this act is in addition to other statutory authority the secretary has to require the licensing and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary under article 9 of chapter 39 of the Kansas Statutes Annotated.

History: L. 1978, ch. 161, § 7; July 1.

**39-952.** Correction order not issued, when. The secretary of health and environment or the secretary's designee shall not issue a correction order to a person licensed to operate an adult care home because of a violation of a provision of article 9 of chapter 39 of the Kansas Statutes Annotated or a rule and regulation adopted thereunder which was caused by any person licensed by the state board of healing arts if such person licensed by the state board of healing arts is not an owner, operator or employee of the adult care home and if the person licensed to operate the adult care home shows that he or she has exercised reasonable diligence in notifying such person licensed by the state board of healing arts of his or her duty to the residents of the adult care home.

History: L. 1978, ch. 161, § 8; July 1.

**39-953.** Citation of act. K.S.A. 39-923 to 39-944, inclusive, and acts amendatory thereof or supplemental thereto, and K.S.A. 39-931a and 39-945 to 39-952, inclusive, and acts amendatory thereof or supplemental thereto, shall be known and may be cited as the adult care home licensure act.

History: L. 1978, ch. 161, § 10; July 1.

**39-953a.** Order prohibiting new admissions to adult care home; when issued; proceedings; remedy not limiting. (a) At any time the secretary of health and environment initiates any action concerning an adult care home in which it is alleged that there has been a substantial failure to comply with the requirements, standards or rules and regulations established under the adult care home licensure act, that conditions exist in the adult care home which are life threatening or endangering to the residents of the adult care home, that the adult care home is insolvent, or that the adult care home has deficiencies which significantly

ely affect the health, safety, nutrition of the adult care home. The secretary may issue an order, on the emergency proceedings provided by the Kansas administrative procedure act, prohibiting any new admissions to the adult care home until further determined by the secretary. This remedy of the secretary is in addition to any other authority the secretary has regarding licensure and operation of adult care homes and is not to be construed to limit the powers and duties of the secretary under the adult care home licensure act.

This section shall be part of and supplement the adult care home licensure act. L. 1988, ch. 146, § 3; July 1.

Annual report of violations resulting in issuance of correction orders and penalties. (a) The secretary shall issue to each adult care home a report summarizing the category of licensure, violation and occurrence of those violations which resulted in the issuance of correction orders or penalties within the preceding 12-month period.

This section shall be part of and supplement the adult care home licensure act. L. 1988, ch. 146, § 4; July 1.

#### RECEIVERSHIP

Application for receiver; order appointing receiver; qualifications of persons designated as receiver; method of selection, rules and regulations. (a) The secretary of health and environment, the owner of an adult care home, or a person licensed to operate an adult care home may file an application with the district court for an order appointing a receiver of health and environment. The secretary of health and environment may appoint a receiver of health and environment in an adult care home whenever: (1) there is a threat to the health and safety of persons residing in the adult care home; (2) the adult care home is insolvent; or (3) the secretary of health and environment has issued an order suspending the license of the adult care home.

The receiver shall adopt rules and regulations setting forth the necessary qualifications of

persons to be designated receivers and a method for selecting designees.

History: L. 1978, ch. 162, § 1; L. 1985, ch. 151, § 1; July 1.

**39-955. Filing application for receivership; contents.** The application for receivership shall be filed in the district court in the county where the adult care home is located. The application shall be verified and set forth the specific reasons therefor.

History: L. 1978, ch. 162, § 2; July 1.

**39-956. Service of copies of application for receivership; posting in adult care home.** The applicant shall serve those persons set forth in K.S.A. 39-954 with copies of the application. Service of process shall be as provided for under the code of civil procedure. The applicant shall also send five (5) copies of the application for receivership to the adult care home. The adult care home shall post the copies of the application in conspicuous places within the adult care home.

History: L. 1978, ch. 162, § 3; July 1.

**39-957. Answer to application for receivership.** A party shall file an answer to the application within five (5) days after the service of the application upon such person.

History: L. 1978, ch. 162, § 4; July 1.

**39-958. Priority of application for receivership in district court; evidence; appointment of receiver; certain statutes inapplicable to license granted receiver; length of license.** The application for receivership shall be given priority by the district court and shall be heard no later than the seventh (7th) day following the filing of the application. A continuance of no more than ten (10) days may be granted by the district court for good cause. The district court shall give all parties who have filed an answer the opportunity to present evidence pertaining to the application. If the district court finds that the facts warrant the granting of the application, the court shall appoint the secretary of health and environment or the designee of the secretary as receiver to operate the home.

Upon the appointment of a receiver under this section, the receiver shall be granted a license by the licensing agency to operate

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an adult care home as provided under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof or acts supplemental thereto. The provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof and acts supplemental thereto, relating to inspection prior to granting a license to operate an adult care home and relating to payment of license fees shall not apply to a license granted to a receiver under this section, and such license shall remain in effect during the existence of the receivership and shall expire on the termination of the receivership. The receiver shall make application for the license on forms provided for this purpose by the licensing agency.

History: L. 1978, ch. 162, § 5; July 1.

**39-959. Powers and duties of receiver.** A receiver appointed in accordance with the provisions of this act shall have the following powers and duties:

- (a) Conduct the day to day business operations of the adult care home;
- (b) reimburse the owner or licensee, as appropriate, a fair monthly rental for the adult care home, taking into account all relevant factors, including the condition of such adult care home and set-offs arising from improvements made by the receiver;
- (c) give fair compensation to the owner or licensee, as appropriate, for all property taken or used during the course of the receivership if such person has not previously received compensation for the property being taken or used;
- (d) correct or eliminate any deficiency in the adult care home that concerns the health, safety, nutrition, or sanitation of the residents of the adult care home and is life threatening or endangering;
- (e) enter into contracts as necessary to carry out his or her duties as receiver and incur expenses for individual items of repairs, improvements or supplies without the procurement of competitive bids, if otherwise required by law, where the total amount of such individual item does not exceed five hundred dollars (\$500);
- (f) collect incoming payments from all sources and apply them to the costs incurred in the performance of his or her functions as receiver including the compensation of the receiver, if any;

(g) honor all existing leases, mortgages, chattel mortgages and security interests;

(h) operate the adult care home so as to provide safe and adequate health care for the residents of the adult care home;

(i) provide for the orderly transfer of all residents in the adult care home to other adult care homes or make other provisions for their continued safety and health care, as necessary;

(j) other powers and duties as authorized or imposed by the district court.

History: L. 1978, ch. 162, § 6; July 1.

**39-960. Expenditures from moneys appropriated for purposes of act; when authorized; repayment.** The secretary of social and rehabilitation services, upon request of a receiver, may authorize expenditures from moneys appropriated for purposes set forth in this act if incoming payments from the operation of the adult care home are less than the cost incurred by the receiver in the performance of the receiver's functions as receiver or for purposes of initial operating expenses of the receivership. Any payments made by the secretary of social and rehabilitation services pursuant to this section shall be owed by the owner or licensee and repaid to the secretary of social and rehabilitation services when the receivership is terminated pursuant to K.S.A. 39-963 and amendments thereto and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

History: L. 1978, ch. 162, § 7; L. 1984, ch. 158, § 1; July 1.

**39-961. Department of health and environment to assist receiver; expenses of department; repayment.** The personnel and facilities of the department of health and environment shall be available to the receiver for the purposes of carrying out the receiver's duties as receiver as authorized by the secretary of health and environment.

The department of health and environment shall itemize and keep a ledger showing costs of personnel and other expenses establishing the receivership and assisting the receiver and such amount shall be owed by the owner or licensee to the department of health and environment. Such department shall submit a bill for such expenses to the receiver for inclusion in the receiver's final accounting. Any amount so billed and until repaid shall constitute a lien against all

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non-exempt personal and real property of the owner or licensee.

History: L. 1978, ch. 162, § 8; L. 1984, ch. 158, § 2; July 1.

**39-962.** Supervision of district court; final accounting; removal. The receiver shall be subject to the supervision of the district court. The receiver shall file a final accounting with the district court upon the termination of the receivership. The receiver shall be subject to removal by the district court for good cause.

History: L. 1978, ch. 162, § 9; July 1.

**39-963.** Termination of receivership; circumstances; accounting and disposition of money; court orders for recovery of certain expenses and costs. (a) The court shall terminate the receivership only under any of the following circumstances:

(1) Twenty-four months after the date on which the receivership was ordered;

(2) a new license, other than the license granted to the receiver under K.S.A. 39-958 and amendments thereto, has been granted to operate the adult care home; or

(3) at such time as all of the residents in the adult care home have been provided alternative modes of health care, either in another adult care home or otherwise.

(b) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the district court and shall make disposition of surplus money at the direction of the district court.

The court may make such additional orders as are appropriate to recover the expenses and costs to the department of health and environment and the secretary of social and rehabilitation services incurred pursuant to K.S.A. 39-960 or 39-961 and amendments thereto.

History: L. 1978, ch. 162, § 10; L. 1984, ch. 158, § 3; July 1.

**39-964.** Procedures for and review and enforcement of administrative actions. (a) The provisions of the Kansas administrative procedure act and the act for judicial review and civil enforcement of agency actions shall govern all administrative proceedings conducted pursuant to K.S.A. 39-945 through 39-963, and amendments thereto, except to the extent that the provisions of the above-named acts would conflict with

the procedures set forth in the above-mentioned statutes.

(b) This section shall be a part of and supplemental to article 9 of chapter 39 of the Kansas Statutes Annotated.

History: L. 1984, ch. 313, § 69; July 1, 1985.

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30-10-215 (1)

30-10-215. ICF-MR rates; effective dates. (a) Effective date of per diem rates for existing facilities. The effective date of a new rate that is based on information and data in the ICF/MR cost report shall be the first day of the third calendar month following the month the complete cost report is received by the agency.

(b) Effective date of the per diem rate for a new provider. The effective date of the per diem rate for a new provider, as set forth in subsection (c) of K.A.R. 30-10-214, shall be the date of certification by the department of health and environment pursuant to 42 CFR section 442.13, effective October 3, 1988, which is adopted by reference. The interim rate determined from an approved projected cost report filed by the provider shall be established with the fiscal agent by the first day of the third month after the receipt of a complete and workable cost report. The effective date of the final rate, determined after audit of the historical cost report filed for the projection period, shall be the date of certification by the department of health and environment.

(c) Effective date of the per diem rate for a new provider resulting from a change in provider.

(1) The effective date of the per diem rate for a change in provider, as set forth in K.A.R. 30-10-215, shall be the date of certification by the department of health and environment. The effective date of the final rate, determined after audit of the historical cost report filed for the projection period, shall be the date of certification by the department of health and environment.

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30-10-215 (2)

(2) The effective date of the projected and final rate for a new provider, as set forth in K.A.R. 30-10-214, shall be the later of the date of the receipt of the ICF-MR financial and statistical report or the date the new construction is certified.

(d) The effective date of the per diem rates for providers with more than one facility filing an historic cost report, in accordance with K.A.R. 30-10-213, shall be the first day of the third calendar month after all cost reports due from that provider have been received.

(e) The effective date for a provider filing an historic cost report covering a projection status period shall be the first day of the month following the report year-end. This is the date that historic and estimated inflation factors are applied in determining prospective rates. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991.)

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§ 442.13

42 CFR Ch. IV (10-1-85 Edition)

(45 FR 22736, Apr. 4, 1980)

§ 442.13 Effective date of agreement.

(a) *Basic requirements.* If the Medicaid agency enters into a provider agreement, the effective date must be in accordance with this section.

(b) *All Federal requirements are met on the date of the survey.* The agreement must be effective on the date the on-site survey is completed (or on the day following the expiration of a current agreement) if, on the date of the survey, the provider meets:

(1) All Federal health and safety standards; and

(2) Any other requirements imposed by the Medicaid agency.

(c) *All Federal requirements are not met on the date of the survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements.

(2) The date on which the provider submits a correction plan acceptable to the State survey agency or an approvable waiver request, or both.

(45 FR 22736, Apr. 4, 1980)



## Kansas Medicaid Plan

Substitute per letter dated 06/16/98

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### ICF-MR Choosing to Cease Operation Requesting Assistance Through an Approved ICF-MR Closure Plan.

#### A. Parameters of Closure Plan

The closure plan will be written and cover a specified time period, agreed upon by the affected ICF-MR and Social and Rehabilitation Services, Commission of Mental Health and Developmental Disabilities (SRS/MH&DD), not to exceed twelve continuous months. The affected ICF-MR will have the characteristics of a provider who has received approval from the Department of Social and Rehabilitation Services for closure. The monthly attrition rate will be the total number of individuals residing in the facility, divided by the number of months specified for the facility closure. The rate of placement will be the same for individuals who are Medicaid eligible and individuals who are Non-Medicaid eligible. Each individual will be placed out of the ICF-MR, according to the life style preferences documented in their person-centered plan, and in compliance with the Developmental Disability Reform Act, K.S.A. 39-1801 et seq.(attached). The individual/guardian will have the choice of where to live and who will provide services. The Community Developmental Disabilities Organization (CDDO) of the chosen area will be responsible for arranging needed services.

#### B. Budget Projection

The affected ICF-MR will submit a projected budget to SRS/MH&DD for approval, two months before the start of the agreed upon closure period. The projected budget will be based on the fixed costs of the operation reflected in the most recent historical cost report submitted to SRS/MH&DD, and the variable costs related to the expected decrease in volume of service due to attrition. Fixed costs are those costs incurred to provide a service regardless of whether one delivers one unit of service or one thousand, i.e. rental/lease agreements and occupancy costs. Variable costs are those costs that can be presumed to decrease in roughly direct relationship to the amount of service delivered, i.e. supplies, some categories of staff salaries. The affected ICF-MR will be exempt from the cost center limits and placed on projected status for a maximum twelve month closure period. Under no circumstances will SRS/MH&DD pay more for the ICF-MR in total than it would have paid if it remained in operation. The ICF-MR will submit quarterly cost reports to SRS/MH&DD in order to monitor fiscal status related to projected budget. The cost report will be an abbreviated form of the annual historical cost report and will document the expenditures of the major cost centers; Administrative, Plant Operation, Habilitation, and Room and Board.

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C. Methodology

The ICF-MR will calculate a projected per diem rate by dividing the projected budget by the projected bed days for the closure period. The closure plan will allow for a settlement to the affected ICF-MR if the final cost report indicates that reasonable actual costs varied from the amount paid according to the method of rate setting described above.

D. Repayment

The affected ICF-MR will repay SRS/MH&DD for all costs incurred in excess of allowable cost limits established by SRS/MH&DD, in the event of failure to close within the agreed upon time frame. The repayments may be amortized over a period of time not to exceed twelve calendar months.

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